

AMENDED IN ASSEMBLY APRIL 21, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 671**

**Introduced by Assembly Member Klehs**

February 17, 2005

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*An act to amend and repeal Section 6487.06 of, and to add and repeal Section 18511 of, the Revenue and Taxation Code, relating to taxation.*

LEGISLATIVE COUNSEL'S DIGEST

AB 671, as amended, Klehs. Use taxes: collection: *deficiencies: penalties: returns.*

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. The State Board of Equalization issues forms for the computation and payment of sales and use taxes collected or owed by those retailers. There is no requirement for persons, other than retailers, that owe use taxes to register with the State Board of Equalization for the reporting and payment of use taxes owed by those persons to the state.

This bill makes findings with respect to the loss of use tax revenue attributable to those persons that fail to pay use tax that is owed to this state. This bill states the intent of the Legislature to pursue all available legal means for the collection of use tax that is currently owed to this state.

*The Sales and Use Tax Law provides for an 8-year statute of limitations for the collection of use taxes that are not reported under that law. That law, until January 1, 2006, in the case of a qualified purchaser, limits the statute of limitations to 3 years for the collection of unreported use taxes on specified purchases, if a determination is*

*made that the failure to report and pay the tax was due to reasonable cause.*

*This bill would extend the operation of those provisions limiting the statute of limitations to 3 years until January 1, 2008, as provided. This bill would impose an additional penalty of 10% with respect to failure to pay the use tax under specified circumstances, and require the Franchise Tax Board to revise income tax returns to inform taxpayers of the additional penalty and the benefit of paying use taxes prior to the expiration of specified provisions of law.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares the  
2 following:

3 (1) California has not collected over \$1.35 billion in use tax  
4 revenue that is legally owed to this state.

5 (2) Of this total amount of uncollected use tax revenue,  
6 approximately \$500 million is attributable to  
7 business-to-consumer transactions and the remainder is  
8 attributable to business-to-business transactions.

9 (3) The failure of tax scofflaws to pay what is legally owed to  
10 this state is not only unfair to those taxpayers that comply with  
11 the law, but also places a greater share of the tax burden on those  
12 taxpayers that are in compliance with the laws of this state.

13 (4) If California is able to collect those outstanding use taxes  
14 that are owed to this state, the Legislature will be able to, among  
15 other things, provide quality education to California's children,  
16 affordable health care to California's residents, repair  
17 California's aging infrastructure, and plan for California's future.

18 (5) It is of the highest importance for California to  
19 aggressively pursue tax scofflaws, collect the taxes owed by  
20 them, and to penalize them for their failure to comply with the  
21 laws of this state.

22 (b) It is the intent of the Legislature to pursue all available  
23 legal means for the collection of use tax that is currently owed to  
24 this state.

25 SEC. 2. Section 6487.06 of the Revenue and Taxation Code is  
26 amended to read:

1 6487.06. (a) Notwithstanding Section 6487, the period  
2 during which a deficiency determination may be mailed to a  
3 qualifying purchaser is limited to the three-year period beginning  
4 after the last day of the calendar month following the quarterly  
5 period for which the amount is proposed to be determined.

6 (b) For purposes of this section, a “qualifying purchaser” is a  
7 person that voluntarily files an Individual Use Tax Return for  
8 tangible personal property that is purchased from a retailer  
9 outside of this state for storage, use, or other consumption in this  
10 state, and that meets all of the following conditions:

11 (1) The purchaser resides or is located within this state and has  
12 not previously done either of the following:

13 (A) Registered with the State Board of Equalization.

14 (B) Filed an Individual Use Tax Return with the State Board  
15 of Equalization.

16 (2) The purchaser is not engaged in business in this state as a  
17 retailer, as defined in Section 6015.

18 (3) The purchaser has not been contacted by the State Board of  
19 Equalization regarding failure to report the use tax imposed by  
20 Section 6202.

21 (4) The State Board of Equalization has made a determination  
22 that the purchaser’s failure to file an Individual Use Tax Return  
23 or to otherwise report, or pay the use tax imposed by Section  
24 6202 was due to reasonable cause and was not caused by reason  
25 of negligence, intentional disregard of the law, or by an intent to  
26 evade the taxes imposed by this part.

27 (c) *In addition to any other penalty imposed by this part, a*  
28 *penalty of 10 percent shall be added for failure to timely report*  
29 *and remit the taxes under Chapter 3 (commencing with Section*  
30 *6201).* If the State Board of Equalization makes a determination  
31 that the purchaser’s failure to timely report or remit the taxes  
32 imposed by this part is due to reasonable cause or due to  
33 circumstances beyond the purchaser’s control, the purchaser may  
34 be relieved of any penalties imposed by this part. Any purchaser  
35 seeking relief from penalties imposed by this part shall file a  
36 statement, signed under penalty of perjury, setting forth the facts  
37 that form the basis for the claim for relief.

38 (d) This section shall not apply to purchases of vehicles,  
39 vessels, or aircraft as defined in Article 1 (commencing with  
40 Section 6271) of Chapter 3.5 of this part.

(e) The State Board of Equalization shall submit to the Legislature before January 1, ~~2005~~ 2008, a report that includes the following information:

(1) The number of qualifying purchasers who received the benefits afforded by this section.

(2) The amount of use tax revenue received by the state from the qualifying purchasers described in paragraph (1).

(3) Recommendations for modifying, eliminating, or continuing the operation of, any or all of the provisions of this section.

(f) This section shall remain in effect only until January 1, ~~2006~~ 2008, and as of that date is repealed.

*SEC. 3. Section 18511 is added to the Revenue and Taxation Code, to read:*

*18511. (a) The Franchise Tax Board shall revise the returns required to be filed pursuant to this article, Article 2 (commencing with Section 18601), Section 18633, Section 18633.5, and Article 3 (commencing with Section 23771) of Chapter 4 of Part 11 to include information that informs taxpayers of the increased penalty imposed by Section 6487.06 for failure to pay use taxes and the benefit of paying the use taxes prior to the expiration of Section 6487.06.*

*(b) This section shall remain in effect only until January 1, 2008, and as of that date is repealed.*